THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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UNITED STATES OF AMERICA, Plaintiff,	)	Case No. 1:06CR118
vs.	)	ORDER DENYING MOTION FOR EXTENSION OF TIME
MARCOS USCANGA-MORA,	)	
	)	
Defendant.	)	

* *

This matter is before the court on motion of defendant Marcos Uscanga-Mora. Defendant is requesting an extension of time to file a motion under 28 U.S.C. § 2255. Defendant asserts that he has diligently pursued his rights and that extraordinary circumstances stood in the way of him filing a timely § 2255 petition–namely that he is unable to speak, read, or write English, there are no relevant legal materials in the prison law library that are in the Spanish, and he was unable to locate a Spanish speaking inmate to assist him.

Defendant is well outside the one year limitations period for filing a motion under 28 U.S.C. § 2255. While the record does reflect that the defendant pursued a timely appeal in the Tenth Circuit, which was denied, and even a motion for a writ of certiorari, which was denied by the United States Supreme Court, there is insufficient evidence in the record of diligent efforts to file under 28 U.S.C. § 2255. Nor does the court find that his native Spanish language created circumstances so extraordinary that he could not file within the prescribed time.

Accordingly, the court denies the motion for extension of time to file a motion pursuant to 28 U.S.C. § 2255.

SO ORDERED.

DATED this 10th day of November, 2011.

BY THE COURT:

David Sam
Senior Judge
United States District Court

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. REAL PROPERTY LOCATED AT (REDACTED) Layton, Utah 84040, et al., Defendants.	MEMORANDUM DECISION AND ORDER GRANTING THE GOVERNMENT'S MOTIONS Case No. 1:07-CV-6 TS

This matter is before the Court on the United States of America's (the "Government") Motion for Summary Judgment Against Funds Seized from Home Savings Bank Account # (Redacted) 8618 in the Name of Paul Gotay of at least $381,000.[1] Also before the Court is the Government's Motion to Strike the Claim of American First Builders ("AFB").[2] For the reasons discussed below, the Court will grant both motions.

[1]Docket No. 163.

[2]Docket No. 161.

I. BACKGROUND

Around May 2005, law enforcement began investigating John and Susan Ross (the "Rosses") for misappropriating money from a federally funded program. Prior to the Rosses being indicted, but while the Rosses were under investigation, FBI agents served a number of seizure warrants on accounts held in the names of Susan Ross or John Ross at a number of financial institutions. When the Rosses realized their assets were being seized they contacted an attorney, Paul Gotay.

The Rosses hired Mr. Gotay pursuant to a written "Representation Agreement" on May 9, 2005. Under the terms of the Representation Agreement, Mr. Gotay was to receive a $50,000 non-refundable fee up front; $50,000 upon the filing of state or federal charges; and $50,000 upon the commencement of trial. The Representation Agreement also contained a clause indicating that "non-refundability is conditioned on the absence of default by the Attorney."[3] Moreover, the Representation Agreement provided that "[i]n the event collection or legal proceedings are necessary regarding payment of any or all fees hereunder, the prevailing party shall be responsible for all recovery costs, including a reasonable Attorney's fee."[4] Mr. Gotay received two payments from the Rosses totaling $56,000 that he deposited into his law firm business account.

During a discussion as to the seizure of the Rosses assets, Mr. Gotay instructed the Rosses to contact their various accounts and determine whether all their assets had been seized.

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[3]Docket No. 166 Ex. F, at 1.

[4]*Id*.

The Rosses learned that their Vanguard Group accounts had not been seized. The Vanguard Group accounts held a total of $381,000. Mr. Gotay advised the Rosses to withdraw the money from the Vanguard Group accounts and deposit it in a new account where it could be used for legal fees. On November 6, 2006, the Rosses accompanied Mr. Gotay to Home Savings Bank where Mr. Gotay opened a new account under his name and deposited the $381,000. The Rosses were not joint account holders. According to Mr. Gotay, the $381,000 was to act as a litigation fund.

On November 15, 2006, a federal seizure warrant was issued for the seizure of the Home Savings Bank account. Subsequently, on November 16, 2006, the FBI served the seizure warrant and seized the $381,000.

The Rosses were indicted on November 21, 2006. On December 14, 2006, Mr. Gotay was disqualified from representing the Rosses in their criminal case. Both John and Susan Ross subsequently entered guilty pleas, pursuant to which they each forfeited any right to the $381,000 held in the Home Savings Bank account.[5] Mr. Gotay claims that he has a claim of between $43,000 and $50,000 for unpaid legal fees from the $381,000 dollars in question.

II. STANDARD OF REVIEW

Summary judgment is proper if the moving party can demonstrate that there is no genuine dispute as to any material fact and it is entitled to judgment as a matter of law.[6] In considering whether a genuine dispute of material fact exists, the Court determines whether a reasonable jury

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[5] *See id*. Ex. A, at 6 & *id.* Ex. B, at 5.

[6] FED. R. CIV. P. 56(a).

could return a verdict for the nonmoving party in the face of all the evidence presented.[7] The Court is required to construe all facts and reasonable inferences in the light most favorable to the nonmoving party.[8]

III. DISCUSSION

A. SUMMARY JUDGMENT

The Government argues that there is no genuine issue of material fact that Mr. Gotay is not an innocent owner of any portion of the $381,000 and, therefore, does not have standing to challenge the forfeiture of the entire amount of $381,000. Mr. Gotay counters that the Government has not demonstrated that there is no question of material fact as to whether (1) there is probable cause to believe the property is subject to forfeiture and (2) whether he lacks evidence of an affirmative defense that would entitle him to judgment against the Government.

1. THE ROSSES' INTEREST

Mr. Gotay first argues that "[t]he Government mistakenly asserts that it has met its burden of proof since John and Susan Ross pled guilty to a crime."[9] The Government recognizes that "[i]nitially, 'the burden of proof is on the Government to establish, by a preponderance of the evidence, that . . . property is subject to forfeiture.'"[10] The Government argues that it has

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[7]*See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Clifton v. Craig*, 924 F.2d 182, 183 (10th Cir. 1991).

[8]*See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Wright v. Sw. Bell Tel. Co.*, 925 F.2d 1288, 1292 (10th Cir. 1991).

[9]Docket No. 166, at 1.

[10]Docket No. 164, at 10 (quoting 18 U.S.C. § 983(c)(1)).

demonstrated, by a preponderance of the evidence, that the $381,000 is proceeds of a copyright violation and money laundering and is subject to forfeiture through the guilty pleas entered by John and Susan Ross.

Civil forfeiture proceedings are governed by 18 U.S.C. § 983. Section 983(c) provides that "[i]n a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property . . . the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture."

Mr. Gotay does not dispute that both John and Susan Ross entered guilty pleas in the underlying criminal matter. It is also undisputed that both John and Susan Ross agreed to forfeit all right, title and interest in the funds in question in their respective statements in advance of plea.[11] Furthermore, in each of their statements in advance of plea, the Rosses attest that the $381,000 in dispute was the "proceeds of the offense alleged."

Based on these admissions, the Court finds that there is no genuine issue of material fact that the Government has demonstrated by a preponderance of the evidence that the $381,000 held in the Home Savings Bank account is subject to forfeiture. Therefore, the Court finds, as a matter of law, that the Government has met its burden as to forfeiture of the Rosses' interest in the Home Savings Bank account.

2. MR. GOTAY'S INTEREST

Mr. Gotay next argues that he has a declared and acknowledged interest of $50,000 in the Home Savings Bank account pursuant to his representation agreement with the Rosses. The

[11] *See* Docket No. 164-3, at 5; Docket No. 164-2, at 6.

Government asserts that (1) Mr. Gotay has been paid for all the legal work he provided to the Rosses and is not owed any more money; (2) even if Mr. Gotay is owed $44,000, he has no ownership interest in the $381,000 because he is an unsecured creditor; and (3) Mr. Gotay is not an innocent owner because he had reason to believe that the $381,000 was subject to forfeiture.

Mr. Gotay's claim fails for a number of reasons. First, without arriving at the merits of Mr. Gotay's claim for an additional $44,000 under the Representation Agreement, the Court notes that any such right would not have perfected until after the $381,000 held in the Home Savings Bank were seized. Under the terms of the Representation Agreement, Mr. Gotay was entitled to a second installment payment of $50,000 upon filing of an indictment. It is undisputed that on November 15, 2006, a federal seizure warrant was issued for the seizure of the Home Savings Bank account and on November 16, 2006, the $381,000 was seized. The Rosses were subsequently indicted on November 21, 2006. As a result, any right Mr. Gotay may have to payment of an additional $44,000 did not exist until after the $381,000 had been seized. For this reason alone, Mr. Gotay cannot claim a ownership interest in the property.

Mr. Gotay's claim of ownership in the $381,000 also fails because Mr. Gotay does not qualify as an innocent owner under 18 U.S.C. § 983. Section 983(d) provides a defense for those who feel that they are innocent owners of property and thus should not lose their rights through forfeiture. It provides that "[a]n innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence."[12] Section 983(d)(3)(A) further instructs:

[12]18 U.S.C. § 983(d)(1).

> With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term "innocent owner" means a person who, at the time that person acquired the interest in the property (i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and (ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

Arguably, Mr. Gotay cannot meet either of the two prongs provided above to qualify as an innocent owner. First, it is arguable whether Mr. Gotay is entitled to any portion of the $381,000 based upon the representation agreement. However, that issue is disputed.

Secondly, and most detrimental to Mr. Gotay's case, is that he knew and had cause to believe that the property was subject to forfeiture. Mr. Gotay does not dispute that he directed the Rosses to remove the $381,000 from their Vanguard Group accounts after discovering that the Rosses other assets had been seized. Indeed, Mr. Gotay recommended the Rosses place the funds in a "secure account" and informed the Rosses that the Government could "do whatever they wanted" with regards to the Rosses accounts.[13]

This Court is persuaded by the reasoning of *United States v. $688,670.42 seized from Regions Bank Acct. XXXXXX5028; and $49,603.68 seized from Regions Bank Acct. XXXXXX5540*.[14] In that case, the court found that a check-cashing company, which accepted fraudulently obtained funds and deposited them into bank accounts from which they were subsequently seized by the government, was not an "innocent owner" under 18 U.S.C. § 983(d).[15] The court reasoned that the company's conduct, in attempting to disguise the funds by funneling

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[13]Docket No. 166 Ex. D, at 2.

[14]759 F. Supp. 2d 1341 (N.D. Ga. 2010).

[15]*Id*. at 1349.

them into two bank accounts that it maintained in the name of another entity, evinced complicity in, or at least willful blindness to, the underlying unlawful activity. [16]

Here, Mr. Gotay professes that he was not attempting to disguise the Rosses' funds,[17] and yet, he intentionally placed all of the Rosses' remaining liquid assets in a bank account exclusively in his name. Moreover, he placed the funds in an account at a bank in which neither he nor the Rosses had any other accounts.[18] The Court finds that Mr. Gotay's efforts to make the $381,000 secure manifest, at the very least, complicity in, or willful blindness to, the underlying unlawful activity. Therefore, the Court finds that Mr. Gotay is not an innocent owner for purposes of 18 U.S.C. § 983(d).

For the reasons provided above, the Court finds as a matter of law that Mr. Gotay is not an innocent owner because he had reason to believe that the $381,000 was subject to forfeiture.

B. MOTION TO STRIKE

The Government asserts that AFB's Verified Claim should be stricken.[19] Subsequent to the filing of the Government's Motion to Strike, the Court issued an order to show cause, giving AFB fourteen days to inform the Court as to the status of the case and its intentions to proceed.[20] AFB filed a response to the Court's order to show cause, indicating that it does not have a valid

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[16] *Id*.

[17] *See* Docket No. 166, at 6-8.

[18] *See id.* Ex. C & Docket No. 164-1, at 100-02.

[19] *See* Docket No. 161.

[20] Docket No. 174.

basis to dispute the Government's arguments and "the motion of the [Government] to Strike the Claim of American First Builders may be granted."[21] Based on AFB's non-opposition and concession, the Court will grant the Government's Motion to Strike.

IV. CONCLUSION

It is therefore

ORDERED that the Government's Motion for Summary Judgment Against Funds Seized from Home Savings Bank Account # (Redacted) 8618 in the Name of Paul Gotay of at least $381,000 (Docket No. 163) is GRANTED. It is further

ORDERED that the Government's Motion to Strike the Claim of American First Builders (Docket No. 161) is GRANTED. The Clerk of Court is instructed to close this case forthwith.

DATED November 15, 2011.

BY THE COURT:

TED STEWART
United States District Judge

[21]Docket No. 175.

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IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH,

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DIONICO BLANCO, JR., Defendant.	)	CASE NO. 1:09CR00001 CW ORDER OF DISMISSAL Honorable Clark Waddoups

BASED UPON the motion of the defendant to dismiss the indictment for Speedy Trial Act violation and good cause appearing therefore it is hereby ordered that this indictment shall be and is dismissed without prejudice.

So ordered this 10th day of November, 2011.

BY THE COURT:

Clark Waddoups
U.S. District Court Judge

Michael D. Black (9132)
Austin J. Riter (11755)
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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF UTAH, NORTHERN DIVISION

MICHAEL WATERS, Plaintiff, v. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP; RECONTRUST, NA; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; and DOES 1 through 10, Defendants.	**STIPULATED SCHEDULING ORDER** Case No. 1:10-cv-150 Judge Bruce S. Jenkins

Plaintiff Michael Waters ("Plaintiff") and Defendants Bank of America, N.A., BAC Home Loans Servicing, LP, ReconTrust, NA, and Mortgage Electronic Registration Systems, Inc. (collectively, "Defendants"), having conferred as required by Rule 26(f) of the *Federal Rules of Civil Procedure*, having submitted their Attorneys Planning Meeting Report stipulating to entry of this Order, and good cause appearing, this Court hereby enters the following Scheduling Order:

1. **Initial Disclosures.** The parties shall exchange initial disclosures by November 30, 2011.

2. **Discovery.** Discovery is necessary on all issues, claims, and defenses raised by and relevant to the parties' pleadings. All fact discovery shall be completed by October 31, 2012.

3. **Limitations on Discovery.** Plaintiff and Defendants shall each be permitted to serve up to twenty-five (25) interrogatories, including discrete subparts. Plaintiff and Defendants shall each be permitted to take up to fifteen (15) depositions, limited to seven (7) hours each. The parties may modify these limitations by agreement, or may seek leave of court. Other limitations are as set forth in the *Federal Rules of Civil Procedure*.

4. **Experts Reports and Discovery.** Plaintiff shall serve all expert disclosures and/or reports on his affirmative claims as required by Rule 26(a)(2) of the *Federal Rules of Civil Procedure* ("Expert Reports") by August 10, 2012. Defendants shall serve all Expert Reports regarding their defenses to the claims asserted against them by August 27, 2012. The parties shall serve any rebuttal Expert Reports by September 17, 2012. All expert discovery shall be completed by October 31, 2012.

5. **Other Deadlines.** The deadline for amending pleadings shall be May 14, 2012. All discovery requests must be served so timely responses can be provided under the rules by the discovery cutoff. All dispositive motions shall be filed by November 30, 2012.

6. **Electronically Stored Information and Claims of Privilege.** Issues relating to the discovery and production of electronically stored information and claims of privilege shall be addressed, if necessary, separately by the parties.

7. **Pretrial.** The case will be ready for a pretrial conference by January 31, 2013. 9:30 AM. Pre-trial order due January 18th 2013.

1-:10-cv-150

DATED this 14th day of November 2011.

BY THE COURT:

Honorable Bruce S. Jenkins
United States District Judge

4834-7293-8253 v.1

Milo Steven Marsden (4879)
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Attorneys for Defendant
InternetFitness.com, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

ICON HEALTH & FITNESS, INC., a Delaware corporation; Plaintiff, vs. INTERNETFITNESS.COM, INC., a Pennsylvania corporation; Defendant.	**ORDER STAYING PROCEEDINGS** Civil No.: 1:10-CV-00192-TC Judge: Tena Campbell

Based upon the stipulation of the parties, and good cause appearing, it is hereby ORDERED that proceedings in the above referenced action are stayed pending a final determination by the U.S. Patent and Trademark Office ("PTO"), of Re-examination No. 90/011,768, which is a re-examination of Patent No. 5,772,560 (the "560 Patent").

It is further ORDERED that the parties shall promptly notify the Court upon receipt of notice of a final determination of the re-examination by the PTO, and shall request that the Court set the matter for scheduling conference.

Dated: 11-10-2011

HONORABLE TENA CAMPBELL

U.S. District Judge

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IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	
Plaintiff,	**FINDINGS AND ORDER**
v.	
JAMES MCCLURE,	**Case No. 1:11 CR 015 DS**
Defendant.	

Based on motion of the defendant and stipulation of the plaintiff, the court enters the following:

FINDINGS

1. The defendant will be retaining private counsel to represent the defendant in this case and in a new state criminal case.

2. In order to effectively represent the defendant, new counsel will need additional time to review the case, engage in plea negotiations and prepare for trial.

3. The ends of justice in granting a continuance outweigh the best interest of the public and the defendant in a speedy trial.

ORDER

It is hereby ORDERED that the change of plea hearing be stricken and that the case be referred to the Magistrate Judge to be rescheduled for another change of plea hearing or trial.

It is further ORDERED that the time between November 8, 2011 and the next change of plea hearing or trial be excluded from the computation for the time for trial as described in U.S.C. § 3161.

DATED this 10th day of November, 2011.

David Sam

DAVID SAM
Senior United States District Court Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	Case No.: 1:11-CR-00082 DB
Plaintiff,	:	
vs.	:	**CONSENT TO ENTRY OF PLEA OF GUILTY BEFORE THE**
BRIAN CURT FAIN,	:	**MAGISTRATE JUDGE AND ORDER**
Defendant.		**OF REFERENCE**
	:	

CONSENT TO ENTRY OF PLEA OF GUILTY BEFORE THE MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b)(3), the defendant BRIAN CURT FAIN, after consultation and agreement with counsel, consents to United States Magistrate Judge David O. Nuffer accepting the defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on her plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

The United States, by and through the undersigned Special Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to

Fed.R.Crim.P. 11, and accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.

DATED this 15 day of November 2011.

Brian Fain
BRIAN CURT FAIN

Richard P. Mauro
RICHARD MAURO
Attorney for Defendant

Branden B. Miles
BRANDEN B. MILES
Special Assistant United States Attorney

ORDER OF REFERENCE

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

IT IS HEREBY ORDERED that United States Magistrate Judge David O. Nuffer shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 15th date of NOVEMBER 2011.

BY THE COURT:

Dee Benson

DEE BENSON
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

TYLER SMITH, Plaintiff, v. LIFE INSURANCE COMPANY OF NORTH AMERICA; FMR, LLC; and FIDELITY GROUP EMPLOYEES DISABILITY PLAN, Defendants.	**SCHEDULING ORDER** Case No. 1:11-cv-00127-BSJ District Judge Bruce S. Jenkins

1.	**PRELIMINARY MATTERS**			**DATE**
	Nature of claims and any affirmative defenses:			
	a.	Was Rule 26(f)(1) Conference held?		10/21/2011
	b.	Has Attorney Planning Meeting Form been submitted?		10/22/2011
	c.	Rule 26(a)(1) initial disclosure to be completed by:		12/13/2011
2.	**OTHER DEADLINES**			**DATE**
	a.	Deadline for filing dispositive or potentially dispositive motions	Plaintiff	02/13/2012
			Defendant	03/13/2012
	b.	Deadline for Plaintiff's Reply brief		03/23/2012
	c.	Scheduled for oral argument		03/29/2012 at 9:30 a.m.

Signed 11/14, 2011

BY THE COURT:

Bruce S. Jenkins
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

MARIA C. RAMOS, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	ORDER Case No. 2:06 CR 541 TC

Maria C. Ramos filed a Motion to Modify and Reduce Sentence under 18 U.S.C. § 3582(c)(2). The court orders the United States to file a response to Ms. Ramos' motion within 45 days of the date of this order.

DATED this 14th day of November, 2011.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
U. S. District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SUSAN CATLIN, **Plaintiff,** **v.** **SALT LAKE CITY SCHOOL DISTRICT, et al.,** **Defendants.**	**ORDER** **Case No. 2:08-cv-362-CW-PMW** **District Judge Clark Waddoups** **Magistrate Judge Paul M. Warner**

District Judge Clark Waddoups referred this case to Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(B).[1] Before the court is Susan Catlin's ("Plaintiff") motion for an extension of the November 8, 2011 deadline to serve her initial disclosures.[2] Plaintiff's motion is **GRANTED**. Plaintiff shall serve her initial disclosures on or before November 18, 2011.

IT IS SO ORDERED.

DATED this 15th day of November, 2011.

BY THE COURT:

PAUL M. WARNER
United States Magistrate Judge

[1] *See* docket no. 42.

[2] *See* docket no. 168.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE CODE CORPORATION, a Utah corporation, Plaintiff, v. OMNIPLANAR, INC., a New Jersey corporation; METROLOGIC INSTRUMENTS, INC., a New Jersey corporation, Defendants.	**PROTECTIVE ORDER** Civil No. 2:10-cv-325 Judge Ted Stewart

This matter is before the Court upon the Parties' Joint Motion for Protective Order pursuant to Federal Rule of Civil Procedure 26(c). The Parties represent that discovery in the above-styled case (the "Litigation") is likely to involve testimony and production of documents and things containing or disclosing confidential information. Accordingly, it is hereby ORDERED that a Protective Order is entered in the litigation as follows:

Definitions

1. All words or phrases have their ordinary dictionary definitions unless defined below.

2. "Party" or "Parties" means the named parties in this Litigation, any parent, subsidiary or affiliated corporation of the named parties in this Litigation, their

successors-in-interest and predecessors-in-interest, and their employees, agents and representatives.

3. "Independent Expert" and "Independent Consultant" mean a person who is not an employee, officer, director, owner, attorney or agent in any capacity of a Party and who is retained by a Party or a Party's outside counsel in good faith to assist in the preparation, settlement or trial of this Litigation, for the purpose of assisting in this Litigation. "Independent Expert" and "Independent Consultant" also includes any persons assisting and working under the supervision of an "Independent Expert" or "Independent Consultant."

4. "Confidential Information" means information in written, oral, electronic or other form, whether it be a document, information contained in or derived from a document, information revealed during a deposition, or information revealed in responding to a discovery request, that a Party:

a. believes, in good faith, contains or reveals competitive or proprietary business information, or includes other information of a personal or sensitive nature about the Party (or of another person which information the Party is under a duty to maintain in confidence); and

b. y designates as "Confidential" in accordance with the Protective Order.

5. "Attorneys' Eyes Only Information" means information in written, oral, electronic or other form, whether it be a document, information contained in or derived

from a document, information revealed during a deposition, or information revealed in responding to a discovery request, that a Party:

a. believes, in good faith, contains or reveals highly sensitive information, or information that would otherwise qualify as a trade secret, of a Party (or of another person which information the Party is under a duty to maintain in confidence); and

b. designates as "Attorneys' Eyes Only" in accordance with this Protective Order.

6. "Protected Information" means both Confidential Information and Attorneys' Eyes Only Information.

Designation of Protected Information

7. *Designation of Tangible Material.* Documents and other tangible material claimed to be or to contain Protected Information shall, prior to production, be marked by the producing Party as "Confidential" or "Attorneys' Eyes Only." Placement of the "Confidential" or "Attorneys' Eyes Only" designation on each protected page or on the initial page of a protected document when it is produced shall constitute notice and shall designate the document as Confidential or Attorneys' Eyes Only material. Copies, extracts, summaries, notes, and other derivatives of such Protected Information also shall be deemed Confidential or Attorneys' Eyes Only material and shall be subject to the provisions of this Protective Order. To extent practicable, only the Protected Information contained in a document or other tangible material shall be marked as "Confidential."

8. *Designation of Intangible Material.* Intangible material claimed to be or contain Protected Information shall be designated by the producing Party as "Confidential" or "Attorneys' Eyes Only" in a writing provided to the receiving Party at the time of production.

9. *Subsequent Designation.* Documents produced in this Litigation that are not identified as Protected Information when they were initially produced may within a reasonable time thereafter be designated as Confidential or Attorneys' Eyes Only by the producing Partyby providing written notice to counsel for all other Parties. Upon receipt of such notice, and unless such designation is challenged pursuant to Paragraph 11 of this Protective Order: the receiving Party shall notify each person to whom such document, things or other discovery information, response or testimony has been disclosed by the receiving party, and, upon receipt by the receiving party of the properly designated documents, things or other discovery information, shall arrange the prompt return or destruction of all documents, things or other discovery information, responses or testimony and copies thereof; and the receiving Party shall treat such documents, things, information, responses and testimony as if properly designated as "Confidential" or "Attorneys' Eyes Only," and shall thereafter distribute it only as allowed by this Protective Order. No distribution prior to the receipt of such written notice shall be deemed a violation of this Protective Order.

10. *Designation of Depositions.* Any portion of a deposition may be classified as Protected Information either by a party's attorney or by an attorney representing a third-party witness if the third-party elects to become a signatory to this

Protective Order. (*See* ¶ 28) A Party or third-party witness claiming that any portion of a deposition contains Protected Information shall give notice of such claim to the other Parties and/or the third-party witness sitting for the deposition either prior to or during the deposition, or within twenty-one (21) days after receipt of the deposition transcript; and such testimony taken and such transcript of the relevant portion of the deposition shall be designated as Confidential or Attorneys' Eyes Only. If a portion of a deposition is designated as Confidential or Attorneys' Eyes Only: (a) the Attorneys' Eyes Only portion(s) shall be transcribed and bound separately and shall be labeled "Attorneys' Eyes Only" and treated as such pursuant to this Protective Order; (b) the Confidential portion(s) shall be transcribed and bound separately and shall be labeled "Confidential" and treated as such pursuant to this Protective Order; and (c) the portions that do not contain Protected Information shall be transcribed and bound separately from the Protected Information portions. All deposition transcripts, including drafts thereof, shall be treated as Attorneys' Eyes Only for a period of twenty-one (21) days after receipt of the deposition transcript by counsel.

11. *Modification of Designation.* The designation of Protected Information by the producing Party shall not be determinative and may be modified or eliminated at any time as explained below, provided that the Parties must negotiate in good faith regarding any disputes over designation of Protected Information before presenting the dispute to the Court:

a. The producing Party may, on its own accord, downgrade or eliminate the Confidential or Attorneys' Eyes Only designation on any information or material it produced.

b. A receiving Party may request in writing that the producing Party downgrade or eliminate the Confidential or Attorneys' Eyes Only designation on any information or material and the producing Party may, but is not required to, downgrade such information.

c. If the Parties cannot agree as to the designation of any particular information or material, the receiving Party may move the Court to downgrade or eliminate the Confidential or Attorneys' Eyes Only designation. The burden of proving that the information has been properly designated as protected shall be on the Party who made the original designation.

12. *Information that is Not Protected.* Information shall not be designated or treated as Protected Information if:

a. at the time of the production or disclosure, such information is in the public domain;

b. such information, through no wrongful act or fault of the receiving Party, subsequently becomes part of the public domain;

c. at the time of the production or disclosure, the receiving Party can show it already lawfully possessed and did not receive the information subject to a confidentiality restriction ; or

d. such information is disclosed to the receiving Party by a person who has not breached an obligation to keep such information confidential.

Any Party desiring to disclose designated Protected Information on the grounds that such information does not constitute Protected Information pursuant to the terms of this paragraph must, prior to disclosing such information, obtain written permission from the designating Party or a court order permitting such disclosure.

Access to Protected Information

13. *General Access.* Except as otherwise expressly provided herein or ordered by the Court, Protected Information may be revealed only as follows:

a. to the Court and Court staff *in camera*;

b. to mediator(s), arbitrator(s), or special master(s) attempting to assist in resolving or adjudicating all or any portion of this Litigation, provided that the mediator(s), arbitrators, or special master(s) are appointed by the Court or all parties agree in writing that the mediator(s), arbitrator(s), or special master(s) may serve in that capacity. Any such mediator(s), arbitrator(s), or special master(s) must have signed and delivered to counsel of record for each party a letter in the form of Exhibit A hereto prior to receipt of any Protected Information;

c. to counsel employed or retained by a Party hereto, as well as the secretaries, paralegals, and other staff employed by such counsel;

d. to court reporters transcribing a deposition, hearing, or other proceeding;

e. to witnesses in depositions, subject to the terms of Paragraph 18 herein;

f. to Independent Experts and Independent Consultants but only if the following conditions are met: a Party who proposes to reveal Protected Information to any Independent Expert or Independent Consultant shall, before revealing any Protected Information, (1) identify the Independent Expert or Independent Consultant to the opposing Party no less than ten (10) business days prior to a proposed disclosure, with full identification of the proposed consultant or expert to whom the Protected Information is to be disclosed, including the Curriculum Vitae or resume of the proposed consultant or expert, an identification of any previous or current relationship (personal or professional) with any of the Parties, with the proviso that, if within that ten (10) day period, an objection is stated to such disclosure, no such disclosure will be made without prior Court approval, and (2) obtain an agreement in the form of Exhibit A hereto signed by such Independent Expert or Independent Consultant;

g. to such other persons as hereafter counsel for all Parties agree on in writing or on the record, provided such persons sign Exhibit A attached hereto.

14. *Officer/Director/Individual Party Access.* Information designated Confidential, but not Attorneys' Eyes Only, may be revealed to officers, directors, and employees of any Party with a need to know.

15. *Agreements to Provide Access.* The Parties may agree in writing to permit access to Protected Information to persons not otherwise granted access by the terms of this Protective Order. The writing must identify the particular person to whom the Protected Information will be disclosed and specify, by Bates number if possible, the Protected Information to be disclosed. Prior to such disclosure, counsel for all Parties in the Litigation must have received an agreement in the form of Exhibit A hereto singed by the particular person.

16. *Disputes over Access.* If a dispute arises as to whether a particular person should be granted access to Protected Information, the Party seeking disclosure may move the Court to permit the disclosure. The Party seeking to disclose Protected Information to a particular person shall have the burden of persuasion as to disclosure to that person, although the designating Party shall always have the burden of persuasion as to the propriety of the designation as Confidential or Attorneys' Eyes Only.

Use of Protected Information

17. *Permitted Uses.* Protected Information may be used only for purposes of this Litigation and any other litigation involving the Parties. Protected Information shall not be used or referred to, directly or indirectly, (a) for any business or competitive purpose, (b) for publicity, (c) in any advertising, or (d) in any material disseminated to any person not authorized under the terms herein to receive such Protected Information.

18. *Use at Depositions.* In conducting depositions in this Litigation, no Party shall examine a witness about Protected Information unless the witness has knowledge of or had access to the Protected Information prior to the deposition. If Protected Information is to be discussed or disclosed during a deposition, the producing or designating Party shall during the time the Protected Information is to be discussed or disclosed, have the right to exclude from attendance at the deposition, any person not entitled under this Protective Order to receive the Protected Information.

19. *Use at Court Hearings and Trial.* The fact that information has been designated Confidential or Attorneys' Eyes Only does not preclude its introduction as evidence at a court hearing or trial. Prior to such introduction, however, and subject to the Federal Rules of Evidence, the proponent of the evidence containing Protected Information must give reasonable advance notice to the Court and counsel for the producing or designating Party. Any Party may move the Court for an order that the evidence be received *in camera* or under other conditions to prevent unnecessary

disclosure, including, but not limited to, removal from the courtroom of persons not authorized by this Protected Information.

Other Provisions

20. *Filing Under Seal.* Any document or thing containing or embodying Protected Information that is to be filed in this action shall be filed in sealed envelopes or other sealed containers which shall bear the caption of the case, shall identify the contents for docketing purposes, and shall bear a statement substantially in the following form:

CONFIDENTIAL

> This envelope is sealed pursuant to the Protective Order entered in the above-captioned matter and contains confidential documents filed *The Code Corp. v. Omniplanar, Inc., et.al,* Civil Action No. 2:10-cv-00325-TS. It is not to be opened or the contents thereof displayed or revealed except to persons authorized to inspect them.

Copies of such documents served on counsel for other Parties shall be marked as Confidential or Attorneys' Eyes Only. Outside attorneys of record for the Parties are hereby authorized to be persons who may retrieve confidential exhibits and/or other confidential matters filed with the Court upon termination of this Litigation without further order of the Court, and are the persons to whom such confidential exhibits or other confidential matters may be returned, if they are not so retrieved. No material or copies thereof so filed shall be released except (a) by order of the Court; (b) to outside counsel of record; or (c) as otherwise provided for hereunder.

21. *Power of the Court.* Upon motion by the Parties or upon its own motion after twenty-one (21) days notice to the parties, the Court may order specifically identified Protected Information be freed from some or all of the restrictions imposed

by this Protective Order, or may modify this order in any way justice so requires. Any Party may move to modify any provision of this Protective Order at any time.

22. *Reasonable Precautions.* Counsel for each Party shall take reasonable precautions to prevent unauthorized or inadvertent disclosure of any Protected Information.

23. *Storage.* Protected Information shall, when not in use, be stored in such a manner that persons not in the employment or service of those possessing Protected Information will be unlikely to obtain access to the Protected Information.

24. *Return/Destruction After Litigation.* Within sixty (60) days of the final termination of this Litigation by judgment, appeal, settlement, or otherwise, or sooner if so ordered by the Court, counsel for each Party shall return to counsel for the producing Party or counsel for the producing person (or shall supervise and certify the destruction of), all items constituting, containing, or reflecting another Party's or person's Protected Information; provided, however, that counsel for each Party may retain one set of all pleadings, including exhibits, which may contain Protected Information for their files.

25. *Continuing Obligation.* Neither the termination of this Litigation nor the termination of the employment, engagement, or agency or any person who had access to any Protected Information shall relieve any person from the obligation of maintaining both the confidentiality and the restrictions on use of any Protected Information disclosed pursuant to this Protective Order. The Court shall retain jurisdiction to enforce the terms of this Protective Order.

26. *Effective Date.* This Protective Order shall serve as a stipulation and agreement between the Parties, and shall be effective immediately upon signature by counsel for all Parties and entry by the Court.

27. *Inadvertent Production.* There is no waiver of the attorney-client or any other applicable privilege, or the attorney work-product immunity, should Protected Information be produced, which the producing Party can demonstrate is protected from disclosure by the attorney-client or any other applicable privilege, or the attorney work-product immunity, and which was inadvertently, mistakenly, accidentally or erroneously produced. Upon prompt notice by a producing Party and upon a showing of privilege, immunity or that the Protected Information is subject to a protective order entered in another case, together with a claim of inadvertent, mistaken, accidental or erroneous production, the receiving Party shall immediately return the Protected Information and all documents, things or other discovery information, responses or testimony embodying or reflecting the Protected Information, unless the receiving Party disputes the claim of privilege, immunity, protection, or that the production was inadvertent, mistaken, accidental or erroneous. If the receiving Party disputes the claim, outside counsel for the receiving Party may retain one copy of the documents, things or other discovery information pending resolution of the dispute. Within ten (10) days after providing the receiving Party with a notice seeking return of Protected Information under this section, the producing Party must file a motion with the Court to compel return of the Protected Information if the receiving Party disputes the claim.

The producing Party shall have the burden of showing privilege or immunity, together with a showing of inadvertent, mistaken, accidental or erroneous production.

28. *Election by Third Parties.* Third parties who produce documents or testimony in this Litigation, pursuant to subpoena or otherwise, may elect to become signatories to this Protective Order by executing an Election in the form of the attached Exhibit B. Such third parties shall then receive the protections of this Protective Order as to their Protected Information.

SO ORDERED.

Dated: November 16th, 2011.

BY THE COURT

SAMUEL ALBA
United States Magistrate Judge

STIPULATED AND AGREED AS TO FORM AND CONTENT:

/s/ Rebecca A. Ryon
Brent E. Johnson
J. Scott Karren
Rebecca A. Ryon
HOLLAND & HART, LLP
222 South Main, Suite 2200
Salt Lake City, UT 84101
Attorneys for Plaintiff

/s/ Brian D. Sieve
Brian D. Sieve, P.C.
Tom M. Monagan III
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, IL 60654
Attorneys for Defendants

* Electronically signed by submitting attorney with the permission of Brian D. Sieve

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE CODE CORPORATION, a Utah corporation, Plaintiff, v. OMNIPLANAR, INC., a New Jersey corporation; METROLOGIC INSTRUMENTS, INC., a New Jersey corporation, Defendants.	Civil No. 2:10-cv-325 Judge Ted Stewart

EXHIBIT A

UNDERTAKING OF _____

I, being duly sworn, state that:

1. My present address is _____. My present employer is _____, and the address of my present employer is _____. My present occupation is _____.

2. I have received a copy of the Protective Order in the above-styled case ("Litigation"). I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the

Protective Order, and will use only for purposes of the Litigation, any Protected Information, including the substance and any copy, summary, abstract, excerpt, index or description of such material that is disclosed to me.

4. When requested to do so, I will return all Protected Information that comes into my possession, and all documents and things that I have prepared relating thereto, to counsel for the Party by whom I am employed or retained or from whom I received such material.

5. I understand that if I violate the provisions of the Protective Order, I agree to submit myself to the jurisdiction of the United States District Court, District of Utah, for the purpose of enforcement of the terms of the Protective Order.

Executed on:_____

Signature:_____

Sworn to and subscribed before me
this _____ day of _____, 20__

_____
Notary Public

My commission expires _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE CODE CORPORATION, a Utah corporation, Plaintiff, v. OMNIPLANAR, INC., a New Jersey corporation; METROLOGIC INSTRUMENTS, INC., a New Jersey corporation, Defendants.	Civil No. 2:10-cv-325 Judge Ted Stewart

EXHIBIT B

ELECTION OF NON-PARTY TO PARTICIPATE IN PROTECTIVE ORDER

NAME OF THIRD PARTY _____

I, being duly sworn, state that:

1. My present address is _____. My present employer is _____, and the address of my present employer is _____. My present occupation is _____.

2. I have received a copy of the Protective Order in the above-styled case ("Litigation"). I have carefully read and understand the provisions of the Protective Order.

3. I hereby elect to become a signatory under this Protective Order. Any Protected Information produced by me will be so designated in accordance with the terms of the Protective Order, and will receive the protections set forth in the Protective Order. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of the Litigation, any Protected Information, including the substance and any copy, summary, abstract, excerpt, index or description of such material that is disclosed to me.

4. When requested to do so, I will return all Protected Information that comes into my possession, and all documents and things that I have prepared relating thereto, to counsel for the Party by whom I am employed or retained or from whom I received such material.

5. I understand that if I violate the provisions of the Protective Order, I agree to submit myself to the jurisdiction of the United States District Court, District of Utah, for the purpose of enforcement of the terms of the Protective Order.

Executed on:_____

Signature:_____

Sworn to and subscribed before me
this _____ day of _____, 20__

_____
Notary Public

My commission expires _____

JOHN J. BORSOS, P.C.
JOHN J. BORSOS, (#384)
P.O. Box 112347
Salt Lake City, Utah 84147-2347
Telephone: (801) 533-8883
Fax: (801) 533-8887

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

ROBERT SIMMONS, Plaintiff, vs. MICHAEL J. ASTRUE, in his capacity as Commissioner of the Social Security Administration, Defendant.	**ORDER FOR EXTENSION OF TIME** Case Number: 2:10-cv-00940-TC Honorable Tena Campbell

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, Plaintiff, ROBERT SIMMONS, respectfully filed his motion for Extension of Time with this court on the November 10, 2011

Plaintiff's counsel has conferred with Defendant's counsel and they have agreed to the following dates.

Based upon the agreement of the motion filed with this court and for good cause shown,

IT IS HEREBY ORDERED that the filing dates for the parties' briefs be set as follows:

1. Plaintiff's Brief to be filed no later than December 12, 2011.

2. Defendant's Response to Brief may be filed January 11, 2012.

3. Plaintiff's Reply Brief to be filed no later than January 23, 2012.

DATED this 14 day of November, 2011.

BY THE COURT:

Lena Campbell

UNITED STATES DISTRICT JUDGE

CALLISTER NEBEKER & McCULLOUGH
CASS C. BUTLER (4204)
cassbutler@cnmlaw.com
MICHAEL D. STANGER (10406)
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Attorneys for Defendants

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FRANKI CHIPMAN and KRISTALL BUTTERS, Plaintiffs, vs. SABOL AND RICE, INC. and DAVID CHRIS ROBERTSON, Defendants.	**ORDER GRANTING MOTION FOR APPROVAL OF STIPULATION EXTENDING TIME FOR DEFENDANTS TO RESPOND TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS AND FOR FILING MEMORANDA OPPOSING PENDING MOTIONS** Case No. 2:10-cv-01016 Judge Ted Stewart

Based upon the Motion for Approval of Stipulation Extending Time for Defendants to Respond to Plaintiffs' Requests for Production of Documents and For Filing Memoranda Opposing Pending Motions ("Motion") submitted by the Parties, and being fully advised herein,

IT IS HEREBY ORDERED that the Parties' Motion is Granted. The deadline for Defendants to respond to Plaintiffs' requests for production of documents is extended until

November 28, 2011 and the deadlines to oppose Sabol and Rice, Inc.'s Motions for Summary Judgment on Plaintiffs' Second and Fourth Causes of Action and Defendants' Motion for Withdrawal of Admissions are tolled and extended until two weeks after the Parties have received the deposition transcripts from the depositions, which are scheduled to be taken in December 2011.

DATED this 14th day of November, 2011.

BY THE COURT:

Samuel Alba
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **[PROPOSED] ORDER GRANTING MOTION FOR APPROVAL OF STIPULATION EXTENDING TIME FOR DEFENDANTS TO RESPOND TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS AND FOR FILING MEMORANDA OPPOSING PENDING MOTIONS** was sent via the Court's electronic filing system on this 11th day of November, 2011 on the following:

Roger H. Hoole, Esq.
Bruce Clotworthy, Esq.
HOOLE & KING L.C.
4276 South Highland Drive
Salt Lake City, Utah 84124

/s/ Benjamin P. Harmon

Order prepared by:
Michael D. Black (9132)
PARR BROWN GEE & LOVELESS
185 South State Street, Suite 800
Salt Lake City, UT 84111
Telephone: (801)532-7840
Facsimile: (801)532-7750
mblack@parrbrown.com

Attorneys for Defendant Bank of America, N.A. successor by merger to Countrywide Bank, FSB, BAC Home Loans Servicing, LP and ReconTrust Company, N.A.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

MERLEE MARROQUIN WALKER, Plaintiff, vs. COUNTRYWIDE BANK FSB d/b/a BAC HOME LOANS SERVICING, LP; RECONTRUST COMPANY, N.A.; and DOES 1-10, Defendants.	**ORDER OF DISMISSAL WITH PREJUDICE** Case No: 2:10-cv-1187 Judge Tena Campbell

Based upon the Motion and Stipulation of Counsel, and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-entitled matter and all claims asserted therein are dismissed with prejudice, and on the merits, with each party to bear their own costs and attorneys fees.

DATED this 14 day of November, 2011.

BY THE COURT:

BY: _____
Judge Tena Campbell
United States District Judge

4812-9473-7421, v. 1

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

V.

Mathew A. Schutt

ORDER OF PROBATION UNDER 18 U.S.C. § 3607

CASE NUMBER: 2:11 cr. 340

The defendant having been found guilty of an offense described in 21 U.S.C. 844, and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

IT IS ORDERED that the defendant is placed on * probation as provided in 18 U.S.C. § 3607 for a period 12 Months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on the next page of this Order, and the following special conditions:

The defendant:

1) Shall pay a $1000.00 fine, a $25.00 special assessment fee and a $115.00 drug testing fee.
2) Shall participate in a drug education and/or treatment program if ordered to do so by the supervising probation officer.
3) Shall undergo drug testing, including but not limited to urinalysis if ordered to do so by the supervising probation officer.

Signature of Judge

Robert T. Braithwaite, U.S. Magistrate Judge

CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

My date of birth is _____, and I am ☐ am not ☑ entitled to an expungement order as 18 U.S.C. § 3607(c), if the proceedings are dismissed.

Signature of Defendant

Address of Defendant

Signature of Defense Counsel

Daryl P. Sam

Printed Name of Defense Counsel

11/10/11

Date

EARL XAIZ, #3572
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320
Fax: (801) 364-6026

IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. ARTURO MAGANA CHAVEZ, Defendant.	ORDER TO CONTINUE PURSUANT TO TITLE 18, §3161 Case No. 2:11-CR-00384-TS-1 Judge Ted Stewart

Based on the Motion to Continue the Jury Trial filed by defendant, Arturo Magana Chavez, in the above-entitled case, and good cause appearing, the court makes the following findings:

1. Counsel for the Government is having fingerprint testing done on the gun that was seized in this case, and that process has not yet been completed.
2. This continuance does not affect defendant's detention status as he is being held in jail pending sentence on a separate state felony charge.
3. Counsel believes that a continuance of thirty to forty days is appropriate.
4. Assistant United States Attorney Mark Vincent has been contacted by defense counsel and does not object to the Continuance.

Based on the foregoing findings, it is hereby:

ORDERED

The Jury Trial previously scheduled to begin on December 13, 2011, is hereby continued to the 7th day of February, 2012, at 8:00 am. Pursuant to 18 U.S.C. § 3161(h), the Court finds that the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial.

SIGNED BY MY HAND this 15th day of November, 2011.

HONORABLE TED STEWART
United States District Court Judge

Steven B. Killpack (1808)
43 East 400 South
Salt Lake City, Utah 84lll
Telephone: (801) 656-5221
Facsimile: (801) 364-3232
killpack@rocketmail.com

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES of AMERICA, Plaintiff, v. EUGENIO VILLA-LOPEZ, Defendant.	:	**ORDER TO CONTINUE SENTENCING** Case No. 2:11-CR-647 TS The Honorable Ted Stewart

Based on the Motion to Continue Sentencing filed by defendant, Eugenio Villa-Lopez, in the above-entitled case, and good cause appearing, the court makes the following Findings:

1. Additional time is needed for defendant to fulfill his agreement with the government;

2. Assistant United States Attorney, Matthew Bell, has no objection to the continuance.

3. The ends of justice are served by a continuance.

Based on the foregoing findings, it is hereby:

ORDERED

Based upon the Court's Findings, the agreement of parties, and good cause appearing, it is HEREBY ORDERED that the sentencing set for December 1, 2011 be continued to the 23rd of February, 2012 at 2:30 p.m., and defense counsel shall have until January 2, 2012 to file a response to the Pre-Sentence Report.

DATED this 15th day of November, 2011.

THE HONORABLE TED STEWART
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DIVISION DISTRICT OF UTAH

UNITED STATES OF AMERICA
V.

MATTHEW PAYNE

ORDER OF PROBATION
UNDER 18 U.S.C. § 3607

CASE NUMBER: 2:11-CR-709 DS

The defendant having been found guilty of an offense described in 21 U.S.C. 844 and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

IT IS ORDERED that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of Twelve (12) months---------- without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on the next page of this Order, and the following special conditions:

The defendant:

1) Shall pay a $1,000.00 fine, a $25.00 special assessment, and a $115.00 drug testing fee.
2) Shall participate in a drug education and/or treatment program if ordered to do so by the supervising probation officer.
3) Shall undergo drug testing, including but not limited to urinalysis, if ordered to do so by the supervising probation officer.

Signature of Judge

U.S. Magist. Judge
Name and Title of Judge

CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

My date of birth is 10-29-1976, and I am ☐ am not ☑ entitled to an expungement order as provided in 18 U.S.C. § 3607(c), if the proceedings are dismissed.

Matthew Payne
Signature of Defendant

Address of Defendant

Signature of Defense Counsel

ABIGAIL M. DIZON-MAUGHAN
Printed Name of Defense Counsel

10-13-2011
Date

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff(s), v. PAUL VIGIL Defendant(s).	)	Case No. 2:11-CR-740 DB **CONSENT TO ENTRY OF PLEA OF GUILTY BEFORE THE MAGISTRATE JUDGE AND ORDER OF REFERENCE**

Pursuant to 28 U.S.C. § 636(b)(3), the defendant, PAUL VIGIL, after consultation and agreement with counsel, consents to United States Magistrate Judge accepting defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on his plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.

DATED this 15th day of November, 2011.

Defendant

Attorney for Defendant

Assistant United States Attorney

ORDER OF REFERENCE

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

IT IS HEREBY ORDERED that United States Magistrate Judge shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 15th day of November, 2011

BY THE COURT:

Dee Benson
United States District Judge

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

V.

ORDER OF PROBATION UNDER 18 U.S.C. § 3607

CASE NUMBER: 2:11CR900

The defendant having been found guilty of an offense described in 21 U.S.C. 844, and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

IT IS ORDERED that the defendant is placed on * probation as provided in 18 U.S.C. § 3607 for a period 12 Months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on the next page of this Order, and the following special conditions:

The defendant:

1) Shall pay a $1000.00 fine, a $25.00 special assessment fee and a $115.00 drug testing fee.
2) Shall participate in a drug education and/or treatment program if ordered to do so by the supervising probation officer.
3) Shall undergo drug testing, including but not limited to urinalysis if ordered to do so by the supervising probation officer.

Signature of Judge

Robert T. Braithwaite, U.S. Magistrate Judge

CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

My date of birth is _____, and I am ☑ am not ☐ entitled to an expungement order as 18 U.S.C. § 3607(c), if the proceedings are dismissed.

Signature of Defendant

Address of Defendant

Signature of Defense Counsel

November 10 2011
Date

Natalie Benson
Printed Name of Defense Counsel

David R. Olsen (Utah Bar No. 2458)
Paul M. Simmons (Utah Bar No. 4668)
Charles T. Conrad (Utah Bar No. 12726)
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

KAREN CHRISTOFFERSEN; BART CHRISTOFFERSEN; KC CHRISTOFFERSEN; JESSE ANNE CHRISTOFFERSEN; PHYLLIS CHRISTOFFERSEN; and THE ESTATE OF ALAN CHRISTOFFERSEN, deceased, Plaintiffs, vs. UNITED PARCEL SERVICE, INC., LIBERTY MUTUAL INSURANCE GROUP, and JOHN DOES 1-10, Defendants.	**ORDER FOR EXTENSION OF TIME** Case No: 2:11cv0259 BJS Honorable Bruce S. Jenkins

Based upon the motion for an extension of time filed by plaintiffs Karen Christoffersen, Bart Christoffersen, KC Christoffersen, Jesse Anne Christoffersen, Phyllis Christoffersen, and the Estate of Alan Christoffersen, deceased, (collectively, "Plaintiffs") and the parties' stipulation and good cause appearing,

IT IS HEREBY ORDERED THAT the Plaintiffs may have an extension of time to and including November 29, 2011, to respond to United Parcel Service's, Inc.'s Motion for Summary Judgment.

Dated this 14th day of November, 2011.

BY THE COURT

BRUCE S. JENKINS
DISTRICT COURT JUDGE

Approved as to Form:

/s/ Melinda K. Bowen
John R. Lund
Melinda K. Bowen
SNOW CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, UT 84145-5000

DATED this 11th day of November, 2011.

DEWSNUP KING & OLSEN

/s/ Charles T. Conrad
David R. Olsen
Paul M. Simmons
Charles T. Conrad
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of November, 2011, I caused a true and correct copy of the foregoing ORDER FOR EXTENSION OF TIME to be served via CM/ECF service, to be served upon the following:

Matthew L. Lalli
Adam C. Buck
SNELL & WILMER
15 W. South Temple, Ste 1200
Beneficial Tower
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/s/ Charles T. Conrad

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. ART INTELLECT, INC., a Utah corporation d/b/a MASON HILL and VIRTUALMG, PATRICK MERRILL BRODY, and LAURA A. ROSER, and GREGORY D. WOOD, Defendants.	**CIVIL CONTEMPT ORDER** **AND** **MEMORANDUM DECISION** Case No. 2:11-CV-357-TC

INTRODUCTION

This matter comes before the court on Plaintiff Securities and Exchange Commission's (SEC) motion seeking a court ruling that Defendants Patrick Brody and Laura Roser are in contempt of court for violation of this court's orders.[1] For the reasons set forth below, the court finds that both Mr. Brody and Ms. Roser are in CONTEMPT of court for violating the April 18, 2011 Order Appointing Receiver, Freezing Assets and Other Relief ("Asset Freeze Order")[2] but that the SEC has not met its burden to prove violation of the April 18, 2011 Temporary Restraining Order ("TRO").[3]

[1]Docket No. 23.

[2]Docket No.5.

[3]Docket No. 4.

FINDINGS OF FACT[4]

The TRO and Asset Freeze Order

In this civil enforcement action, Plaintiff SEC contends that Defendants Art Intellect (d/b/a Mason Hill and VirtualMG) ("Mason Hill"), Patrick Brody, and Laura Roser have violated the federal securities laws by acting as unregistered brokers or dealers while fraudulently selling unregistered "investment contract" securities beginning as early as April 2009. As part of the enforcement proceedings, the SEC sought and obtained, in April 2011, a temporary restraining order and an asset freeze order. (See Apr. 18, 2011 Temporary Restraining Order (Docket No. 4) ("TRO"); Apr. 18, 2011 Order Appointing Receiver, Freezing Assets and Other Relief ("Asset Freeze Order") (Docket No.5) (collectively "April 2011 Orders")).

The TRO restrained Patrick Brody and Laura Roser (collectively "Defendants") from violating federal securities laws pending final resolution on the merits:

> Pending the determination of the Commission's Motion for a Preliminary Injunction or hearing on the merits, Defendants and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, are temporarily restrained and enjoined from **engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation** of Sections 5(a), 5(c) and 17(a) of the Securities Act, and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.

(TRO at 2-3 (emphases added).)

The Asset Freeze Order froze the assets of Mr. Brody, Ms. Roser, and Mason Hill, and

[4]The facts are taken from the evidence submitted by parties in declarations (see Appendix to Docket No. 3, and Docket Nos. 12, 24, 64, 70), and during the June 29, 2011, and July 12, 2011, evidentiary hearings (see Hr'g Transcripts (Docket Nos. 75, 88)).

appointed a receiver to manage and recover Mason Hill assets. By the Asset Freeze Order, the court took "exclusive jurisdiction and possession of **the assets, of whatever kind and wherever situated, of** the following Defendants: Art Intellect, Inc., d/b/a Mason Hill and VirtualMG, **Patrick Merrill Brody, Laura A. Roser**, and Gregory D. Wood . . . ."[5] The asset freeze extended to "Receivership Property," which is broadly defined to include

> all property interests of the Receivership Defendants [including Mr. Brody and Ms. Roser], including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants [including Mr. Brody and Ms. Roser] own, possess, have a beneficial interest in, or control directly or indirectly.

(Asset Freeze Order ¶ 8.A.). The scope of the asset freeze was described as follows:

> 3. Except as otherwise specified herein, all Receivership Assets are frozen until further order of this Court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets, other than the Receiver, are hereby restrained and enjoined from **directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets**.
>
> 4. Defendants Patrick M. Brody, Laura A. Roser and Gregory D. Wood, their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service, or otherwise, and each of them, **hold and retain within their control, and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal of any assets, funds, or other properties . . . of Defendants Patrick Merrill Brody, Laura A. Roser and Gregory D. Wood currently held by them or under their control . . . .**

(Id. ¶¶ 3-4 (emphasis added).)

In addition to a freeze of assets, the court, in the "Access to Information" portion of the

[5]Asset Freeze Order ¶ 1 (emphasis added).

Asset Freeze Order, ordered Mr. Brody and Ms. Roser "to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Defendants and/or all Receivership Property."[6] Furthermore, the Asset Freeze Order enjoins acts interfering, hindering, or otherwise obstructing the Receiver's ability to perform his duties (such as to marshal and manage Receivership Property), and acts that dissipate or diminish the value of Receivership Property.[7]

Attempt to Evade Service

On April 18, 2011, Mr. Brody and Ms. Roser (who are husband and wife) received actual notice of the enforcement action and the SEC's attempt to serve them with the relevant papers, but they attempted to evade service for some time.[8] According to the testimony of Gregory Wood, a Co-Defendant in the lawsuit and former President of Mason Hill:

> A [After the lawsuit was filed, I went to Mr. Brody's and Ms. Roser's] home that evening that [the company] was shut down. They attacked me for shutting the company down and stealing money from the company. That's all they had to say.
>
> . . .
>
> Q Did they talk about whether or not they were going to accept service of process with you?
>
> A I didn't discuss that - - excuse me. **I told the constable that they were**

[6] Id. ¶ 9; see also id. ¶¶ 10-11(A)-(H).

[7] Id. ¶ 30.

[8] See Docket Nos. 11-12.

home because I'd just left there. I said, you need to go there right now because they are home. But I do remember saying I got served, so you guys should probably be served any minute.

Q Were they surprised that they had been sued by the SEC?

A **They were catty. They laughed about it. They kind of said, oh, no big deal**. . . .

(July Tr. at 176-77 (emphasis added).)

That same day, April 18, 2011, a constable was prepared to serve the complaint and summons, the SEC's TRO motion, the TRO, and the Asset Freeze Order on Mr. Brody, Ms. Roser, and Mason Hill. He went to the Defendants' home twice that day, once in the afternoon and once in the evening. There was no answer at the door and the lights were not on, but two cars, one of which was registered in Mr. Brody's name, were parked in the driveway.

On August 19, 2011, the constable spoke to Gregory Wood, whom he had previously served. According to the constable, "[Gregory] Wood told me that he spoke with Roser and asked her why she was hiding. She told him that she did not want to deal with it and was not going to make it easy."[9] Over the next three days, the constable attempted to serve the Defendants at their home twelve more times, at different times of the day and evening.

On April 25, 2011, the court granted the SEC's Motion for Service by Publication and Alternative Means and extended the TRO until a preliminary injunction hearing could be held.[10]

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[9]Declaration of Orson Madsen (Docket No. 12-1) ¶ 6.

[10]See Docket Nos. 13-14, 31.

The SEC published notice of its action against Mr. Brody, Ms. Roser and Mason Hill in the Salt Lake Tribune and Deseret News and also sent copies of the TRO, Asset Freeze Order, Complaint and other pleadings to all known email addresses of Mr. Brody and Ms. Roser.

Finally, in addition to service by published legal notice and electronic mail, Mr. Brody and Ms. Roser were personally served with the Complaint and other pleadings and April 2011 Orders on April 25, 2011.[11] Despite Defendants' unsupported protestations to the contrary, Mr. Brody and Ms. Roser had notice of the TRO and Asset Freeze Order no later than April 25, 2011.[12]

Actions Contrary to the Mandates of the TRO and Asset Freeze Order

On May 13, 2011, before the preliminary injunction hearing was held, the SEC filed a Motion for Order to Show Cause Why Defendants Patrick M. Brody and Laura A. Roser Should Not Be Held in Civil Contempt for violating the TRO and the Asset Freeze Order.[13] The SEC alleged in that motion that the Defendants were disposing of assets subject to the Asset Freeze Order and continuing to offer unregistered securities in a fraudulent offer mirroring the scheme alleged in the SEC's current enforcement action.

Sale and Disappearance of Assets Subject to the Asset Freeze Order

As noted above, the language of the Asset Freeze Order enjoined Mr. Brody and Ms.

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[11] See Summons Returned Executed (Docket Nos. 15-16) on Mr. Brody and Ms. Roser.

[12] In their opposition to the motion for a finding of contempt, the Defendants insist that the SEC has not proven that they had actual notice of the April 2011 Orders until May 16, 2011. (See Defs.' Mem. Opp'n (Docket No. 78) at 2-3.) But they provide no documentation or sworn testimony to support that unconvincing assertion.

[13] Docket No. 23.

Roser from "transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing" Receivership Property.[14] Nevertheless, in May 2011, the Receiver learned that furniture and computers, among other items, belonging to Mr. Brody and Ms. Roser were being advertised and offered for sale.

Mr. Brody and Ms. Roser, who are married, have a personal residence at 6492 Canyon Crest Drive in Salt Lake County ("Canyon Crest home"). They live there with Bryan Brody, the 18-year-old son of Mr. Brody.[15] The Canyon Crest home is owned by Ms. Roser.[16]

From April 27, 2011, to May 5, 2011, a series of classified advertisements were posted on the website www.ksl.com by a seller named "Bryan" with the phone number 801-558-3073.[17] One of these advertisements, dated April 28, 2011, lists for sale the "Entire Contents of a Home." The advertisement states, in part, "We are moving and need to sell everything is [sic] our home. Offer anything for anything."[18] The advertisement contains several photographs of the items offered for sale. The total asking price of the items in this advertisement was $51,000.[19] The photographs were taken in the Canyon Crest home and depict personal items belonging to the

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[14]Asset Freeze Order ¶ 3.

[15]See Declaration of Stacie Parker (Docket No. 24-1) ¶ 3. Although Mr. Brody is currently serving a sentence in a Federal Bureau of Prisons facility, the Canyon Crest home is his personal address.

[16]See Declaration of Scott R. Frost (Docket No. 24-2) at ¶ 8 and Ex. B, attached thereto.

[17]Parker Decl. at ¶¶ 6, 8 and Ex. A, attached thereto; Frost Decl. at ¶¶ 5-7 and Ex. A, attached thereto.

[18]Ex. A to Frost Decl.

[19]Frost Decl. ¶ 6 and Ex. A attached thereto.

Defendants.[20] The telephone number of the seller is Bryan Brody's cell phone number.[21]

Additional advertisements listed by the same seller, "Bryan" at 801-558-3073, were posted from April 27, 2011, through May 5, 2011, and contained photographs of a number of household and other items, including a motorcycle, Macintosh computers, a computer printer, an iPhone, an iPad, furniture, and appliances, for sale at various prices. The asking price for these items totaled $9,060.[22] All of the items shown in these advertisements belong to the Defendants and were photographed in the Canyon Crest home.[23]

Two other advertisements, posted May 1, 2011, from the same seller, "Bryan" at 801-558-3073, list a "$1,000,000 Home in Amazing Neighborhood."[24] The home offered is the Canyon Crest home owned by Ms. Roser.[25] One of the advertisements shows an interior photograph of the Canyon Crest home, and offers the top two floors of the house for rent of $3,000. The other advertisement shows a view from the Canyon Crest home and offers the home for sale for $925,000 (the "Description" notes that "Price is 125k below last appraisal").[26] This advertisement states that seller financing is available with a $100,000 down-payment and no

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[20]Parker Decl. ¶¶ 2-4, 6-8.

[21]Id. at ¶ 6.

[22]Frost Decl. ¶¶ 5-7 and Ex. A attached thereto.

[23]Parker Decl. ¶¶ 2-4, 6, 8, and Ex. A attached thereto.

[24]Id. Ex. A.

[25]See id. ¶ 8; Frost Decl. ¶¶ 3-4, 8.

[26]Id.

credit check required.[27]

A majority or all of the assets being offered for sale in the KSL advertisements were likely acquired with funds fraudulently obtained from Mason Hill investors.[28] For instance, Stacie Parker, who was Mr. Brody's personal assistant beginning in May 2010 (she worked out of the Canyon Crest home), testified that:

> Mr. Brody and Ms. Roser had several credit cards in their names and/or in the name of Art Intellect or VirtualMG . . . . Mr. Brody and Ms. Roser allowed me to use their credit cards for their personal expenses and shopping for the household. The credit card I primarily used for their shopping and expenses was in the name of Laura Roser and Art Intellect. . . . I was instructed by Mr. Brody to deliver all of Mr. Brody and Ms. Roser's bills to Michael Keith, the Chief Operating Officer for Mason Hill.[29]

Her testimony went unchallenged by the Defendants.

Michael Keith (whose testimony was also unchallenged) testified that "as functioning [Chief Operating Officer] of Mason Hill, my responsibilities included overseeing the accounting and banking functions of the company. This included recording accounting transactions and managing various bank accounts **consistent with instructions from Mr. Brody** [regarding what to do with money received from investors] and the needs of the company."[30] According to Mr. Keith,

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[27]See Parker Decl. at ¶ 8 and Ex. A, attached thereto; Frost Decl. at ¶¶ 5-7 and Ex. A, attached thereto.

[28]The court, in a recent Preliminary Injunction Order, held that the SEC had proven, by a preponderance of evidence, that Mr. Brody and Ms. Roser violated federal securities laws through Mason Hill's fraudulent solicitation of unregistered securities. (See Oct. 20, 2011 Prelim. Inj. Order (Docket No. 134).)

[29]Parker Decl. ¶ 5.

[30]Decl. of Michael Keith (Ex. E to Docket No. 64) ¶¶ 3-4 (emphasis added).

> [a] large portion of the money deposited with Mason Hill by investors was used to pay the personal expenses of Pat Brody and Laura Roser. . . . I would estimate that Mason Hill paid between $28,000 and $35,000 per month to cover Mr. Brody and Ms. Roser's personal spending. Part of the monthly amounts paid Mr. Brody and Ms. Roser's credit card bills – some as high as an accumulated $75,000; tithing to the LDS Church; automobile payments – including $700 per month for a car used by Mr. Brody's attorney; home mortgages; and personal travel-related expenses.[31]

And Scott Frost, a staff accountant for the SEC who investigated matters related to this case, testified that former employees, including Stacie Parker and Michael Keith, told him that Mr. Brody and Ms. Roser

> had several credit cards in their names and/or Art Intellect or Virtual MG, entities owned by Roser. Credit cards were used by some of the former employees to buy personal goods for Brody, Roser and their household. The former employees informed me that Mason Hill paid all of these credit card bills using investor funds.[32]

He further testified that Mr. Brody's and Ms. Roser's bills included an $8,000 hot tub, and that such bills were given to Michael Keith to pay out of the Mason Hill operating account (which was funded by Mason Hill investors).[33]

On May 17, 2011 hearing, the court held a status conference on pending injunction and contempt matters, during which it was agreed that the Receiver would conduct an inventory of the Defendants' private residence and that the Defendants would withdraw the advertisements on www.ksl.com. According to the Receiver, "the Canyon Crest home previously contained a number of valuable and expensive items, in addition to those that had been listed for sale. These items were seen in the home after April 15, 2011 and included: a grand piano, antique typewriter,

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[31] Id. ¶ 6.

[32] Frost Decl. ¶ 14.

[33] Id. ¶¶ 11, 15.

almost new hot tub, rare books, jewelry, and a restored Porsche automobile."[34]

During the court-ordered inventory of the Canyon Crest home, it became clear that several items were missing, including a grand piano, antique typewriter, hot tub, rare books, jewelry, and a restored Porsche automobile. According to the Receiver,

> [n]one of these items were found in the Canyon Crest home during the inventory. During the inventory I also noted: there were indentation marks in the carpet that indicated to me a grand piano had previously been there and had been recently removed; there was a large back patio that contained a large empty area with wiring sticking out from the wall, indicating to me the hot tub had recently been removed; there were empty hooks on some of the walls, indicating to me that artwork had recently been removed from those areas. I also noted that at least some of the items listed for sale in the ads were not in the Canyon Crest home, although I understand the items were photographed in the home. Those items included Mac computers, an iPhone, and an iPad.[35]

Currently, neither the SEC nor the Receiver knows the location of those items because Mr. Brody and Ms. Roser have refused to cooperate.[36] Despite repeated requests from the SEC and the Receiver, they have not complied with the disclosure requirements of the Asset Freeze

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[34]Declaration of Wayne R. Klein (Receiver) (Ex. F to Docket No.64) ¶ 7.

[35]Klein Decl. ¶ 8. See also May 20, 2011 Declaration of Scott Frost (Ex. G to Docket No. 64) ¶¶ 3-9 (describing similar observations he made while taking part in the inventory of the Canyon Crest home).

[36]In the July 8, 2011 Memorandum In Opposition To Motion For Finding Contempt (Docket No. 78), the Defendants contend that they "cooperated with the SEC including granting access to Ms. Roser's home for the Receiver's inventory." (Id. at 3.) Discussing the "Assets identified by the SEC and Receiver as having been owned or possessed by Defendants prior to May 16, 201" (when they purportedly received notice of the Asset Freeze Order), the Defendants claim that the assets "were not owned by Defendants, or remain on the household premises and have not been sold, transferred or conveyed, or cannot be adequately identified by the Receiver's or the Commission's description, or are subject to the privileges of the Fifth Amendment to the United States Constitution or other applicable exemption of assets under Utah law or privilege." (Id. at 3-4.) The Defendants' conclusory statements are not supported by any citation to law, documentation or sworn testimony.

Order.[37]

Although the Defendants, upon admonition from the court during a May 17, 2011 hearing,[38] withdrew their advertisements on www.ksl.com, and allowed representatives of the SEC and the Receiver to inventory the contents of the Canyon Crest home, the damage had already been done and has not been rectified since. Initially, Mr. Brody and Ms. Roser refused to appear for properly noticed depositions. Months later, they agreed to appear for depositions. On June 23, 2011, the SEC took Mr. Brody's and Ms. Roser's depositions.[39] During the depositions, SEC counsel asked several questions regarding assets that belong to the Receivership Estate and which the Receiver was not able to locate during his inventory at the Brody-Roser home. Mr. Brody and Ms. Roser, in response, asserted their Fifth Amendment right against self-incrimination to every question concerning assets, including whether he or she recognized the assets, whether the assets were contained in the home and whether any of the items had been sold.[40]

Continuation of Similar Enterprise

The SEC contends that both Mr. Brody and Ms. Roser, despite receiving notice and proper service of the TRO, continue to violate the federal securities laws by recruiting sales people and soliciting investor funds in a scheme almost identical in nature to Mason Hill. The

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[37]See id. ¶ 9. See also id. Ex. A (email listing missing items and requesting information and return of those items from Mr. Brody and Ms. Roser).

[38]See May 17, 2011 Minute Entry / Docket Order (Docket No. 31).

[39]See Dep. of Patrick M. Brody (Pl.'s Ex. 2 from July 12, 2011 Hr'g); Dep. of Laura Roser (Pl.'s Ex. 3 from July 12, 2011 Hr'g).

[40]See, e.g., Brody Dep. at 17-21; Roser Dep. at 22, 35, 38-39, 43-45, 55-57.

court, in the TRO, found that the SEC made a sufficient and proper showing in support of restraining Mr. Brody and Ms. Roser from engaging in ongoing violations of the federal securities laws

> by evidence establishing a prima facie case of and a strong likelihood that the Commission will prevail at trial on the merits and that the Defendants, directly or indirectly, have engaged in and, unless restrained and enjoined by order of this Court, will continue to engage in acts practices, and courses of business constituting violations of Sections 5(a), 5(c), and 17(a) [of the Securities Act] and Sections 10(b) and 15(a) of the Exchange Act . . . and Rule 10b-5 thereunder . . . .[41]

The court also recently made a similar finding when it issued its October 20, 2011 Preliminary Injunction Order.[42]

The SEC presented evidence about post-TRO activities by Mr. Brody, and, to a lesser extent, Ms. Roser. That evidence takes the form of two unchallenged declarations, one by Scott Frost, SEC's staff accountant and investigator on the case, and one by Mr. Ryan Reilly, an individual whom Mr. Brody attempted to recruit as a sales associate for Mason Hill and, after Mason Hill was shut down, a different heretofore unknown entity called Residential Realty Advocates (RRA).

According to Mr. Reilly, who had posted his resume on Linkedin.com in early April 2011, received a call during the week beginning April 18, 2011

> from a gentleman who identified himself as Mr. Brody. Mr. Brody told me he was calling about a position with a company by the name of Mason Hill. He told me about the company and gave me the website address of www.masonhill.com. He wanted me to work for him as a sales associate helping to recruit investors in Mason Hill. Mr. Brody told me that for each investor I brought into Mason Hill, I

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[41]TRO at 2.

[42]See Docket No. 134.

> would receive a commission of $1,500. I spoke with Mr. Brody twice during the week, but I ultimately decided not to work for Mason Hill.[43]

Mr. Reilly received the call during the week that the SEC and the Receiver shut down Mason Hill and received the TRO from the court.

On Tuesday, April 26, 2011, one day after Mr. Brody was personally served with the TRO, Mr. Reilly

> received a call from a gentleman who identified himself as Patrick Merrill. Patrick Merrill told me about a sales opportunity with an entity by the name of Residential Realty Advocates ("RRA"). I was informed that the company was located in the Salt Lake City area however there were additional locations in Nevada and Florida. Patrick Merrill told me that he was interested in hiring me as a sales associate with RRA. He told me that RRA would pay me $1,500 for each new investor I secured for RRA. I told Patrick Merrill that I needed to do some research before deciding to join RRA. He told me that he would call me back the next day, April 27. The structure of the opportunity presented by Patrick Merrill sounded very similar to the Mason Hill program.[44]

On that same day, "Patrick Merrill" sent an email to Mr. Reilly that contained two attachments that "Patrick Merrill" called "investment overview"[45] and "financials."[46]

Mr. Reilly did some research on the Internet and found that Patrick Merrill Brody has recently been sued by the SEC. Mr. Reilly observed that "The SEC action that named Mr. Brody looked similar to what he was trying to do with RRA, so I decided not to pursue the opportunity. Based on Mr. Reilly's testimony in his declaration, the court is convinced that "Patrick Merrill"

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[43]Declaration of Ryan Reilly (Ex. 3 to Docket No. 24) ¶¶ 2-4.

[44]Id. ¶¶ 5-6.

[45]The document is titled "Foreclosure Litigation Investment Opportunity." Id. at Ex. A, attached thereto.

[46]The document is titled "Financial Breakdown (Example Property)." Id.

and Patrick Brody are one and the same person. Mr. Reilly said that,

> [o]ver the course of two week's time, I spoke with both Mr. Brody and Patrick Merrill on multiple occasions. They had the same voice inflections, pitch, sound and speech mannerisms and I concluded that they were the same person. I confronted Patrick Merrill with my conclusion when we spoke on April 28, 2011, and he denied that his full name was Patrick Merrill Brody or that he had anything to do with Mason Hill. He did tell me, however, that he didn't think I would be a good fit for RRA.[47]

That was the extent of Mr. Reilly's conversations with Mr. Brody.

Scott Frost, the SEC investigator, also stated in his sworn declaration that on May 6, 2011, he heard Mr. Brody testify under oath about Ms. Roser's involvement with a business called "Jensen Blair." Mr. Frost was referring to Mr. Brody's testimony during Mr. Brody's sentencing proceedings in the federal criminal case of United States v. Brody, Case No. 2:08-CR-410 (D. Utah).[48] According to Mr. Frost,

> On May 6, 2011, I attended a sentencing hearing in which [Patrick] Brody was sentenced for a misdemeanor tax conviction before Judge Clark Waddoups in the U.S. District Court, District of Utah. During the course of the hearing, Brody was called to testify. Among other things, he said: his wife, [Laura] Roser, had previously planned to travel to Ireland for the purpose of establishing a business; that he, Brody, had used an email address by the name www.patrickmerrill@jensenblair.com; and that Jensen Blair was the name of the business that he and his wife had considered starting in Ireland.[49]

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[47]Reilly Decl. ¶¶ 8-9.

[48]On October 22, 2010, a jury convicted Mr. Brody of failure to file a tax return, in violation of 26 U.S.C. § 7203. See Indictment pp. 9-10 in United States v. Brody, Case No. 2:08-CR-410 (D. Utah) (hereinafter "U.S. v. Brody"); Jury Verdict (Docket No. 223) in U.S. v. Brody. Mr. Brody, who is currently serving a ten-month federal sentence (he self-surrendered on July 1, 2011) faces approximately six more months in prison. See May 6, 2011 Minute Entry (Docket No. 302) in U.S. v. Brody.

[49]Frost Decl. ¶ 13.

During Mr. Brody's deposition in this case, when SEC counsel asked Mr. Brody whether he attempted to establish a business venture in Ireland, Mr. Brody's response was, "I take the Fifth."[50] When SEC counsel asked if Mr. Brody was "familiar with the term Jensen Blair," he once more exercised his Fifth Amendment rights.[51]

Similarly, during Ms. Roser's deposition, when SEC counsel asked, "You tried to start up a separate business in Ireland, didn't you, Ms. Roser?", she responded "I assert my rights to take the Fifth Amendment."[52] She provided the same answer when asked "What is RRA?" and "Are there any questions you will answer regarding RRA . . .?"[53]

CONCLUSIONS OF LAW

The court finds that the SEC has established by clear and convincing evidence that Patrick Brody and Laura Roser are in contempt of court for violating the Asset Freeze Order, but the SEC has not met its heavy burden to show that either Mr. Brody or Ms. Roser is in contempt of court for violating the TRO.

Contempt Standard

Under federal law, the court has inherent power to coerce compliance with its orders, sanction behavior constituting fraud on the court, and vindicate its authority in the face of contumacious behavior. See, e.g., Chambers v. NASCO, Inc., 501 U.S. 32, 43-44 (1991) ("It is firmly established that the power to punish for contempt is inherent in all courts. This power

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[50]Brody Dep. at 57.

[51]Id.

[52]Deposition of Laura Roser (Pl.'s Ex. 3) at 40-41.

[53]Id. at 81.

reaches both conduct before the court and that beyond the court's confines, for the underlying concern that gave rise to the contempt power was not merely the disruption of court proceedings. Rather, it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial.") (internal citations, omissions, and quotation marks omitted). "[C]ontempt is considered civil if the sanction imposed is designed primarily to coerce the contemnor into complying with the court's demands and criminal if its purpose is to punish the contemnor, vindicate the court's authority, or deter future misconduct." United States v. Lippitt, 180 F.3d 873, 876-77 (7th Cir. 1999) (citing Hicks v. Feiock, 485 U.S. 624, 631-32 (1988)). See also United States v. Buck, 281 F.3d 1336, 1342 (10th Cir. 2002) (noting that fraud on the court "requires a showing that one has acted with an intent to deceive or defraud the court" through a "deliberate scheme").

To succeed on its motion for a finding of contempt, the SEC must prove, by clear and convincing evidence, that (1) each order at issue was valid and enjoined conduct in reasonable detail (i.e., was sufficiently specific when defining the conduct enjoined); (2) the enjoined party had actual knowledge of the order through personal service or otherwise and was subject to it; and (3) the enjoined party disobeyed the order. See, e.g., Reliance Ins. Co., 159 F.3d at 1315-16; Fed. R. Civ. P. 65(d)(2) (defining persons bound by injunction and restraining order).

In civil contempt proceedings, disobedience of the order need not be willful. Rather, "[a] district court is justified in adjudging a person to be in civil contempt for failure to be reasonably diligent and energetic in attempting to accomplish what was ordered." Bad Ass Coffee Co. of Hawaii, Inc. v. Bad Ass Ltd. P'ship, 95 F. Supp. 2d 1252, 1256 (citing Goluba v. School Dist. of

Ripon, 45 F.3d 1035, 1037 (7th Cir. 1995)).[54]

The SEC Has Satisfied Its Burden.

Valid and Sufficiently Detailed Orders Existed.

The orders at issue here are the TRO and Asset Freeze Order. They are valid.

The court also holds that each order was sufficiently clear in defining what conduct was prohibited. Here, there can be no genuine doubt about what the orders prohibited. In addition to the clear language of the orders, the court held multiple hearings before issuing them. In sum, the first element of contempt, the existence of valid court orders, has been established.

Mr. Brody and Ms. Roser Each Had Appropriate Notice of the Orders.

An injunction is binding on those "'who receive actual notice of the order by personal service or otherwise.'" Reliance Ins. Co. v. Mast Constr. Co., 159 F.3d 1311, 1317 (10th Cir. 1998) (quoting Fed. R. Civ. P. 65(d)). The SEC went to great lengths to serve Mr. Brody and Ms. Roser with the relevant papers. Mr. Brody and Ms. Roser were abundantly aware of the relevant court orders and the contents of those orders no later than April 25, 2011.

The SEC Has Partially Established Mr. Brody's and Ms. Roser's Contumacious Behavior and Disobedience

The Asset Freeze Order

The court finds that the SEC has presented clear and convincing evidence that Patrick

[54]A person facing an order to show cause "may assert a defense to civil contempt by showing by clear and convincing evidence that 'all reasonable steps' were taken in good faith to ensure compliance with the court order and that there was substantial compliance, or relatedly by proving 'plainly and unmistakenly' defendants were unable to comply with the court order." Id. n.8. But no evidence has been presented by the Defendants that would enable them to rely on such a defense.

Brody and Laura Roser each knowingly violated — and continue to violate — the Asset Freeze Order.

Evidence shows that the Defendants attempted to sell (and in some cases have sold) assets subject to the Asset Freeze Order and belonging to the Receivership Estate. This violation of the Asset Freeze Order was in addition to Mr. Brody's and Ms. Roser's failure to comply with disclosure requirements in that Order. All of the evidence shows Mr. Brody's and Ms. Roser's complete lack of regard for the court's rulings.

First, the court notes that it draws an adverse inference from Mr. Brody's and Ms. Roser's invocation of their Fifth Amendment Privilege. Both Defendants refused to answer any substantive questions about assets during their depositions. The United States Supreme Court has held that, "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them[.]" Baxter v. Palmigiano, 425 U.S. 308, 318 (1976). "'Failure to contest an assertion . . . is considered evidence of acquiescence . . . if it would have been natural under the circumstances to object to the assertion in question.'" Id. at 319 (quoting United States v. Hale, 422 U.S. 171, 176 (1975)). Mr. Brody and Ms. Roser's silence and failure to contest the SEC's assertions is evidence that they sold (or at a minimum, continue to hide) assets that are subject to the Asset Freeze Order.

Second, the evidence shows a blatant unwillingness on the part of the Defendants' to cooperate in any meaningful way with the SEC and the Receiver. Mr. Brody and Ms. Roser not only refused to cooperate but they actively obstructed the SEC's and the Receiver's ability to

carry out a valid court order (an order issued to protect defrauded investors).[55]

The TRO

The evidence is not clear and convincing that Patrick Brody or Laura Roser violated the TRO. The SEC has a high burden to meet. The language of the TRO enjoins the Defendants from "engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Sections 5(a), 5(c) and 17(a) of the Securities Act, and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder."[56] But the TRO does not specifically describe "transactions, acts, practices, and courses of business." The closest it comes is to refer to the contents of the SEC's Memorandum in Support of the Ex Parte Motion for Temporary Restraining Order and Other Relief, the exhibits filed therewith, and supporting declarations and documentation[.]"[57] The focus of the suit and the activities the SEC sought to restrain were violations of the Securities Act and the Exchange Act.

The evidence shows that Mr. Brody attempted to engage in fraudulent activities by continuing in the same pattern challenged by the SEC in the case here. But the most SEC has shown is that Mr. Brody attempted to recruit a sales associate to conduct a business similar to

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[55]Any assertion on the Defendants' behalf that the Asset Freeze Order was not fair or valid because the court has yet to fully adjudicate the claims on the merits is simply incorrect. The same can be said for their expressed concern about what they consider an "overly aggressive" receiver. The actions of the Receiver do not go beyond the scope of the Receiver's rights and obligations under the court's Asset Freeze Order. The Defendants' dissatisfaction with the court's finding is not a valid reason to refuse to comply.

[56]TRO at 2-3.

[57]Id. at 1-2.

Mason Hill and that he had possession of documents spelling out an investment offer that had some of the same aspects as the Mason Hill business plan. But there is no evidence of solicitation of potential investors, much less that money was actually received from any investor.

The entirety of the direct evidence against Ms. Roser was Mr. Frost's summation of Patrick Brody's testimony during Mr. Brody's May 6, 2011 criminal sentencing hearing.[58] According to Mr. Frost:

> On May 6, 2011, I attended a sentencing hearing in which [Patrick] Brody was sentenced for a misdemeanor tax conviction before Judge Clark Waddoups in the U.S. District Court, District of Utah. During the course of the hearing, Brody was called to testify. Among other things, he said: his wife, [Laura] Roser, had previously planned to travel to Ireland for the purpose of establishing a business; that he, Brody, had used an email address by the name www.patrickmerrill@jensenblair.com; and that Jensen Blair was the name of the business that he and his wife had considered starting in Ireland.[59]

Everything Mr. Brody said on the witness stand related to activities that took place in the past (e.g., "previously planned" and "considered starting"). At the most, the evidence shows that Ms. Roser was involved in Jensen Blair before the TRO was issued. There is no direct evidence that Ms. Roser acted in any way concerning the business of Jensen Blair after the TRO was issued. Moreover, the SEC has not established that Jensen Blair was operating at the relevant times or that it was operating in a manner similar to Mason Hill. Accordingly, the SEC has not met its burden of proving that Ms. Roser violated the TRO.

Finally, any inference the court draws based on Mr. Brody's and Ms. Roser's Fifth Amendment privilege is limited in scope and value, in large part because the substantive

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[58]Mr. Reilly's declaration testimony relates solely to Patrick Brody.

[59]Frost Decl. ¶ 13.

questions posed did not paint a clear picture of any functioning scheme to defraud. The Defendants may have contemplated such a scheme and may have attempted to carry out such a scheme, but the evidence before the court does not reach beyond that. The SEC needs more evidence to convince the court that it should hold Mr. Brody and Ms. Roser in contempt for violation of the TRO.

SEC's Request for Fees and Costs

The SEC has requested an order requiring the Defendants to pay its attorneys' fees and expenses incurred in prosecuting this contempt matter. Because the SEC's memorandum does not engage in analysis about why the SEC, a government agency, is entitled to attorneys' fees and costs, that portion of the motion is denied without prejudice. If the SEC wishes to present a more substantial analysis of why the SEC is entitled to fees and costs, the court will consider the motion.

ORDER

For the reasons set forth above, **the court finds PATRICK M. BRODY and LAURA A. ROSER in CONTEMPT OF COURT** for violation of the Asset Freeze Order, and the court **ORDERS** as follows:

1. The SEC's motion seeking an order holding Patrick Brody and Laura Roser in civil contempt (Docket No. 23) is granted in part and denied in part as stated in detail above.

2. Patrick Brody and Laura Roser, and all those working in active concert or participation with them, **shall immediately transfer** any funds received from the improper dissipation of assets to the court-appointed Receiver, Wayne Klein. In addition, they **shall immediately disclose** to the SEC and the Receiver the whereabouts of unsold and hidden tangible

assets subject to the Asset Freeze Order, and take all necessary steps to assist the Receiver in obtaining possession of those assets. Mr. Brody and Ms. Roser must also **produce** all available documents related to the assets, including (but not limited to) how the assets were purchased, the amount of the purchase, to whom the asset was subsequently sold, and where the proceeds have been placed. Mr. Brody and Ms. Roser must produce to the SEC the missing contents of the filing cabinet that was in their home office or, at a minimum, provide information on the location of those files.

3. **The court hereby orders Laura Roser to self-surrender to this court on December 14, 2011, at 3:30 p.m. for incarceration (or be subject to arrest through a bench warrant)** if she is unable to prove by then, to the satisfaction of the court, that she has (a) complied with the mandate set forth in Paragraph 2 above; (b) has made full and genuine disclosures and cooperated in discovery, and (c) the court has had the opportunity to review the results of such disclosures and discovery, and is satisfied that the information provided is sufficient to purge Ms. Roser of her contempt.

4. The court hereby schedules a hearing for the same time—**December 14, 2011, at 3:30 p.m.—to determine whether Laura Roser has purged herself of her contempt**. If the court officially determines, before December 14, 2011, that Ms. Roser has satisfied the conditions set forth in Paragraph 3(a)-(c) above, the court will strike the hearing through written notice to all concerned. **Otherwise, by this order, Laura Roser is obligated to attend the hearing in person**.

5. The court hereby orders **Patrick Brody**, upon release from federal prison, to **self-surrender to this court within 30 days of his release for incarceration (or be subject to arrest through a bench warrant)** if he is unable to prove by then, to the satisfaction of the court, that he has (a) complied with the mandate set forth in Paragraph 2 above; (b) has made full and genuine

disclosures and cooperated in discovery, and (c) the court has had the opportunity to review the results of such disclosures and discovery, and is satisfied that the information provided is sufficient to purge Mr. Brody of his contempt.

6. Mr. Brody and the SEC are hereby ordered to inform the court when Mr. Brody is released from prison so that the court may immediately schedule a contempt hearing for Mr. Brody to determine whether Mr. Brody has purged himself of contempt. If the court officially determines, before that date (still to be determined) that Mr. Brody has satisfied the conditions set forth in Paragraph 3(a)-(c) above, the court will strike the hearing through written notice to all concerned. **Otherwise, by this order, Patrick Brody is obligated to attend the hearing in person.**

DATED this 15th day of November, 2011.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
U.S. District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

ROSELLA JESSOP Plaintiff, vs. WELLS FARGO BANK, NA; HSBC BANK USA, N.A. AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR10; ETITLE INSURANCE AGENCY, LLC; FOUNDERS TITLE COMPANY; and WELLS FARGO ASSET SECURITIES CORP., Defendants.	**ORDER WITH DISMISSAL WITH PREJUDICE** Case No. 2:11-cv-00385

Presently before the Court is a Stipulation of Dismissal executed by counsel for Plaintiff Rosella Jessop and Defendants Wells Fargo Bank, N.A., Wells Fargo Asset Securities Corporation (collectively "Wells Fargo") and HSBC Bank USA, N.A. as trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR10 ("HSBC") (collectively "Defendants"). The Court, having considered the stipulation of the parties, hereby

DISMISSES Plaintiff's Complaint with prejudice, each party to bear its own attorneys' fees and costs.

IT IS SO ORDERED.

DATED this 14th day of November, 2011.

Dee Benson
United States District Judge

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Attorneys for Defendant Sharp Electronics Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CAO Group, a Utah Corporation,

Plaintiff,

vs.

GE Lighting, a Delaware Corporation, et al.

Defendants.

ORDER GRANTING EXTENSION TO RESPOND TO COMPLAINT

Case No. 2:11-cv-426

Honorable Judge Dee Benson

Based upon the stipulation of the parties and for good cause appearing,

IT IS HEREBY ORDERED that defendant Sharp Electronics Corporation may have an extension of time to and including December 2, 2011 in which to answer, move or otherwise

respond to the Complaint.

DATED this 14th day of November, 2011.

BY THE COURT:

Honorable Judge Dee Benson

APPROVED AS TO FORM AND CONTENT:

/s/ Mica McKinney
Electronically signed with permission
from Mica McKinney
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Attorneys for Plaintiff Zoobuh, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ZOOBUH, INC., a Utah Corporation Plaintiff, vs. BETTER BROADCASTING, LLC., a Utah limited liability company; IONO INTERACTIVE, a company doing business in Utah; ENVOY MEDIA. INC., a California Corporation; DOES 1-40 Defendants.	**ORDER OF DISMISSAL WITH PREJUDICE** Case No.: 2:11cv00516-DB Judge Dee Benson

Based on the Stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that the Complaint filed in this action and all claims, counterclaims, cross claims, third party claims, or other claims that have been or could have been asserted in this action between Zoobuh, Inc. and Envoy Media Group, Inc. are hereby dismissed with prejudice, pursuant to Fed.R.Civ.Pr., Rule 41(a)(1)(A)(ii).

DATED this 14th day of November, 2011.

BY THE COURT:

Dee Benson

Approved as to Form and Substance:

INTERNET LAW CENTER

/s/ Bennet Kelley
Bennet Kelley
(signed by Mr. Cameron, the filing attorney, with the permission of Mr. Kelley)
Attorneys for Defendant Envoy Media Group, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

DEROYALE ARDEANE JOHNSON, Plaintiff, v. DR. TUBBS et al., Defendants.	)	**ORDER TO SHOW CAUSE** Case No. 2:11-CV-641 DB District Judge Dee Benson

Plaintiff, inmate Deroyale Ardeane Johnson, moves the Court to waive his initial partial filing fee (IPFF) of $0.83. He has submitted no documentation--e.g., an up-to-date certified six-month inmate account statement--to support his request.

IT IS HEREBY ORDERED that Plaintiff's motions for waiver of his IPFF and extension of time in which to pay his IPFF are **DENIED**. (*See* Docket Entry #s 13 & 12.) **IT IS FURTHER ORDERED** that Plaintiff must within thirty days show cause why his case should not be dismissed for failure to pay his IPFF.

DATED this 14th day of November, 2011.

BY THE COURT:

Dee Benson

DEE BENSON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

DEROYALE ARDEANE JOHNSON, Plaintiff, v. DR. TUBBS et al., Defendants.	)	**ORDER TO SHOW CAUSE** Case No. 2:11-CV-641 DB District Judge Dee Benson

Plaintiff, inmate Deroyale Ardeane Johnson, moves the Court to waive his initial partial filing fee (IPFF) of $0.83. He has submitted no documentation--e.g., an up-to-date certified six-month inmate account statement--to support his request.

IT IS HEREBY ORDERED that Plaintiff's motions for waiver of his IPFF and extension of time in which to pay his IPFF are **DENIED**. (*See* Docket Entry #s 13 & 12.) **IT IS FURTHER ORDERED** that Plaintiff must within thirty days show cause why his case should not be dismissed for failure to pay his IPFF.

DATED this 14th day of November, 2011.

BY THE COURT:

Dee Benson

DEE BENSON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

JAMES L. HALL AKA JOSEPH W. HALL, Plaintiff, v. RICHARD GARDEN et al., Defendants.	)	**DISMISSAL ORDER** Case No. 2:11-CV-706 TS District Judge Ted Stewart

On September 15, 2011, the Court ordered Plaintiff to within thirty days submit a signed form consenting to incremental collection of his filing fee from his inmate account. Plaintiff has not done so. Indeed the order was returned to the Court as undeliverable, marked, "Disch. . . . Left no Forwarding Address." Plaintiff has not since updated his address with the Court.

IT IS THEREFORE ORDERED that Plaintiff's complaint is DISMISSED without prejudice for failure to comply with the Court's order.

DATED this 15th day of November, 2011.

BY THE COURT:

CHIEF JUDGE TED STEWART
United States District Court

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

* * * * * * * * *

JANICE MAUGHN,	)	
	)	Civil No. 2:11-CV-0730-BSJ
Plaintiff,	)	
	)	**ORDER**
vs.	)	
	)	
OMNI CREDIT SERVICES OF FLORIDA, INC.,	)	
	)	
	)	
Defendant.	)	

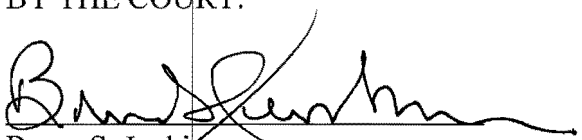
* * * * * * * * *

Based on Plaintiff's Notice of Voluntary Dismissal filed by Plaintiff, by and through counsel, on November 10, 2011,

IT IS HEREBY ORDERED that the above-entitled action is **dismissed** with prejudice, pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, as amplified by Local Rule DUCivR 54-1(d).

DATED this 14th day of November, 2011.

BY THE COURT:



Bruce S. Jenkins
United States Senior District Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

THA SEEGMILLER, aka THA H. SMITH, Plaintiff, v. ACCREDITED HOME LENDERS, INC. et al., Defendants.	**ORDER** Case No. 2:11-cv-00771 CW Judge Clark Waddoups

On October 19, 2011, this court entered a temporary restraining order that precluded Defendants Vericrest Financial, Inc., Bank of New York Mellon as Trustee for the CIT Mortgage Loan Trust 2007-1, and Mortgage Electronic Registration Systems, Inc. (collectively "Defendants") from proceeding with foreclosure against Plaintiff's residence.

Subsequently, Defendants provided additional evidence to support they had proper authority to initiate foreclosure proceedings in February 2011. On November 15, 2011, the court held a hearing on whether the temporary restraining order should be lifted. At the hearing, Plaintiff did not dispute the accuracy of the additional evidence. Accordingly, the court concludes that the temporary restraining order should be lifted and hereby vacates the order.

SO ORDERED this 15th day of November, 2011.

BY THE COURT:

Clark Waddoups
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GOZA TRUCKING, LLC Plaintiff, v. UTE ENERGY, LLC, et al., Defendants.	**ORDER FOR *PRO HAC VICE* ADMISSION OF TODD K. GRAVELLE** Civil Case No. 2:11-cv-00893-DB Judge Dee Benson

It appearing to the Court that Petitioner meets the *pro hac vice* admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Todd K. Gravelle in the United States District Court, District of Utah in the subject case is GRANTED.

Dated this 14th day of November, 2011.

Dee Benson

U.S. District Judge Dee Benson

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GOZA TRUCKING, LLC Plaintiff, v. UTE ENERGY, LLC, et al., Defendants.	**ORDER FOR *PRO HAC VICE* ADMISSION OF FRANCES C. BASSETT** Civil Case No. 2:11-cv-00893-DB Judge Dee Benson

It appearing to the Court that Petitioner meets the *pro hac vice* admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Frances C. Bassett in the United States District Court, District of Utah in the subject case is GRANTED.

Dated this 14th day of November, 2011.

Dee Benson

U.S. District Judge Dee Benson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

AHMAD WALI JONES, Plaintiff, v. SHERIFF J. WINDER et al., Defendants.	)	**O R D E R** Case No. 2:11-CV-902 DAK District Judge Dale Kimball

Plaintiff, Ahmad Wali Jones, filed a *pro se* prisoner civil rights complaint.[1] The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full $350.00 filing fee required.[2] Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."[3] Under this formula, Plaintiff must pay $3.13. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

[1] *See* 42 U.S.C.S. § 1983 (2011).

[2] *See* 28 *id.* § 1915(b)(1).

[3] *Id.*

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay $350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of $3.13 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

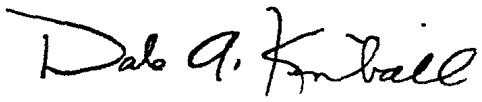
(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 14th day of November, 2011.

BY THE COURT:



JUDGE DALE A. KIMBALL
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Ahmad Wali Jones (Case No. 2:11-CV-902 DAK), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of $350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Ahmad Wali Jones, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of $3.13, which is 20% of the greater of:

(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or

(b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches $10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the $350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

_____
Signature of Inmate
Ahmad Wali Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

IKE EVERSON, Plaintiff, v. DETECTIVE PERRY et al., Defendants.	**O R D E R** Case No. 2:11-CV-992 DAK District Judge Dale A. Kimball

Plaintiff/inmate, Ike Everson, submits a *pro se* civil rights case.[1] Plaintiff applies to proceed without prepaying his filing fee.[2] However, Plaintiff has not as required by statute submitted "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the *6-month period immediately preceding the filing of the complaint* . . . obtained from the appropriate official of each prison at which the prisoner is or was confined."[3]

IT IS HEREBY ORDERED that Plaintiff's application to proceed without prepaying his filing fee is GRANTED.

So that the Court may calculate Plaintiff's initial partial filing fee, IT IS ALSO ORDERED that Plaintiff shall have thirty days from the date of this Order to file with the Court a certified copy of his inmate trust fund account statement(s). If

[1]*See* 42 U.S.C.S. § 1983 (2011).

[2]*See* 28 *id.* § 1915.

[3]*See id.* § 1915(a)(2) (emphasis added).

Plaintiff was held at more than one institution during the past six months, he shall file certified trust fund account statements (or institutional equivalent) from the appropriate official at each institution where he was confined. The trust fund account statement(s) must show deposits and average balances for each month. If Plaintiff does not fully comply, his complaint will be dismissed.

DATED this 14 day of November, 2011.

BY THE COURT:

BROOKE C. WELLS
United States Magistrate Judge

United States District Court

Central Division for the District of Utah

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Ramos

v.

Astrue

Case Number: 2:11-cv-1030-CW

Having considered the application to proceed without prepayment of fees under 28 U.S.C. 1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☐ DENIED, for the following reasons:

ENTER this 14TH day of NOVEMBER, 20 11.

Signature of Judicial Officer

Paul M. Warner, U.S. Magistrate Judge

Name and Title of Judicial Officer

Eric P. Lee (USB #4870)
JONES, WALDO, HOLBROOK & McDONOUGH
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

THE SYNERGY COMPANY OF UTAH, LLC, a Utah limited liability company, Plaintiff, vs. STEVEN LATTEY and COLUMBIA PHYTOTECHNOLOGY LLC, a Washington limited liability company Defendants.	**ORDER OF REMAND** Case No. 2:11-cv-1033 The Honorable Clark Waddoups

Having reviewed the parties' *Joint Motion to Remand* filed in the above-captioned matter, based upon the parties' agreement and stipulation and for good cause appearing, IT IS HEREBY ORDERED that the above-captioned matter is remanded to the Seventh Judicial District Court for Grand County, State of Utah.

DATED this 15th day of November, 2011.

BY THE COURT

The Honorable Clark Waddoups

United States District Judge

Approved as to Form:

SNOW, CHRISTENSEN & MARTINEAU

By: /s/ Camille N. Johnson
(Signed by Filing Attorney with Express Permission)
Camille N. Johnson
Attorneys for Defendant Columbia PhytoTechnology

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH CENTRAL DIVISION

BeBay Thi Luu, **Petitioner,** **vs.** **Drug Enforcement Administration,** **Respondent.**	**ORDER TO SHOW CAUSE** **Case No. 2:11-MC-653**

On July 13, 2011, Petitioner filed a Motion for Return of Property with the Court. Petitioner's counsel is not licensed to practice law in Utah, and was not admitted pro have vice prior to filing the Motion. On July 14, 2011, the Court caused a packet containing information about the requirements for pro hac vice admittance to be mailed to Petitioner's counsel. Since that time, Petitioner's counsel has not moved the Court to admit him pro hac vice, nor has any further action been taken in this matter.

Petitioner is hereby ordered to show cause why the above captioned case should not be dismissed. Petitioner is directed to respond in writing within seven days from the date of this order and inform the Court of the status of Petitioner's counsel's application for pro hac vice and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 15th day of November, 2011.

By _____
Ted Stewart
United States Judge